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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**CC Docket No. 95-111
RM 8535**

**In The Matter of

TELEPHONE NUMBER PORTABILITY**

MOTION TO ACCEPT LATE-FILED PLEADING

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby requests that the Commission accept the attached "Comments" submitted in response to certain petitions for reconsideration to the First Report and Order issued in the above-captioned proceeding one business day late. As will be shown below, good cause exists for the grant of TRA's Motion.

TRA experienced logistical difficulties beyond its control related to the filing of the above-referenced Comments on the afternoon of September 27, 1996. Despite vigilant efforts, TRA was unable to deliver the Comments to the Office of the Secretary prior to the end of the Commission's official workday.

Grant of TRA's Motion would not result in harm to any party to this proceeding. Because the Comments are being filed with the Commission and served on all parties who submitted petitions for reconsideration on the business day immediately following the filing deadline, the delay involved is nominal.

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Good cause having been shown, TRA respectfully requests that the Commission grant its Motion and permit it to file Comments in the above-referenced docket one business day late.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

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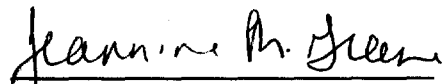
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Before the
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In The Matter of

TELEPHONE NUMBER PORTABILITY

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) CC Docket No. 95-116
) RM 8535
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**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, TRA opposes, and urges the Commission to resist, efforts by incumbent local exchange carriers ("ILECs") and commercial mobile radio service ("CMRS") providers to delay full deployment and availability of service provider number portability and/or to reduce the pro-competitive impact of number portability once deployed.

TRA submits that the First Report and Order represents an equitable balance between the interests of incumbent providers, new market entrants and the consuming public. Although TRA advocated a more expeditious deployment schedule, the timetable adopted by the Commission is both rational and workable, reflecting a reasoned assessment of technical feasibility, network integrity concerns and competitive necessity. Likewise, the performance criteria adopted by the Commission properly satisfy the pro-competitive mandate of the Congress, while retaining adequate flexibility to accommodate innovation and improvements. In particular, the fourth enumerated criterion should be retained to avoid the "undesirable effects" of compelled reliance upon a competitor's network to route calls. Finally, the Commission's decision to impose number portability obligations on CMRS providers is not only amply supported by statutory authority, but is founded on a sound policy rationale.

**Before the
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In The Matter of

TELEPHONE NUMBER PORTABILITY

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) **CC Docket No. 95-116**
) **RM 8535**
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**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby responds to certain petitions for reconsideration¹ of the First Report and Order, FCC 96-286, released by the Commission in the captioned docket on July 2, 1996 (the "First Report and Order").²

¹ Petitions for Reconsideration have been filed by Bell Atlantic, BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), Cincinnati Bell Telephone Company ("Cincinnati Bell"), GTE Service Corporation ("GTE"), The NYNEX Telephone Companies ("NYNEX"), Pacific Telesis Group, Pacific Bell, Nevada Bell and Pacific Bell Mobile Services ("PacTel"), SBC Communications, Inc. ("Southwestern Bell"), U S West, Inc. ("U S West"), United States Telephone Association ("USTA"), MCI Telecommunications Corporation ("MCI"), NEXTLINK Communications L.L.C. ("NEXTLINK"), KMC Telecom, Inc. ("KMC"), American Communications Services, Inc. ("ACS"), AirTouch Communications, Inc. ("AirTouch"), Cellular Telecommunications Industry Association ("CTIA"), Bell Atlantic NYNEX Mobile, Inc. ("BANM"), National Exchange Carrier Association, Inc. ("NECA"), National Telephone Cooperative Association and Organization for the Promotion and Advancement of Small Telecommunications Companies ("NTCA/OPASTCO"), John Staurulakis, Inc. ("Staurulakis"), American Mobile Telecommunications Association, Inc. ("AMTA"), Nextel Communications, Inc. ("Nextel"), and Small Business in Telecommunications, Inc. ("SBT").

² Telephone Number Portability, First Report and Order, 11 FCC Rcd. 8352 (1996).

I.

INTRODUCTION

TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect the interests of entities engaged in the resale of telecommunications services. TRA's more than 450 members are all actively engaged in the resale of interexchange, international, local exchange, wireless and/or other telecommunications services and/or in the provision of products and services associated with such resale. TRA's resale carrier members will be among the many new market entrants that will soon be offering local telecommunications services, generally through traditional "total service" resale or by taking unbundled network elements and recombining them to create "virtual networks."

TRA has been an active participant in this proceeding, having filed comments and reply comments in response to the Notice of Proposed Rulemaking by which the proceeding was initiated,³ as well as supplemental comments and reply comments addressing the impact of the Telecommunications Act of 1996 ("1996 Act")⁴ on the proceeding.⁵ TRA's interest in the proceeding has been, and continues to be, in speeding the availability of service provider number portability and in ensuring that long-term number portability will be deployed in a manner that will promote and enhance competition in the local exchange telecommunications services market. Consistent with this approach, TRA opposes, and urges the Commission to resist, efforts by

³ Telephone Number Portability, Notice of Proposed Rulemaking, 10 FCC Rcd. 12350 (1995).

⁴ Pub. L. No. 104-104, 110 Stat. 56, § 101 (1996).

⁵ Further Comments: Telephone Number Portability, Public Notice, CC Docket No. 95-116, DA 96-358, 61 Fed. Reg. 11,174 (1996).

incumbent local exchange carriers ("ILECs") and commercial mobile radio service ("CMRS") providers to delay full deployment and availability of service provider number portability and/or to reduce the pro-competitive impact of number portability once deployed.

TRA submits that the First Report and Order represents an equitable balance between the interests of incumbent providers, new market entrants and the consuming public. Although TRA advocated a more expeditious deployment schedule, the timetable adopted by the Commission is both rational and workable, reflecting a reasoned assessment of technical feasibility, network integrity concerns and competitive necessity. Likewise, the performance criteria adopted by the Commission properly satisfy the pro-competitive mandate of the Congress, while retaining adequate flexibility to accommodate innovation and improvements. Finally, the Commission's decision to impose number portability obligations on CMRS providers is not only amply supported by statutory authority, but is founded on a sound policy rationale.

II.

ARGUMENT

A. The Commission Need Not, and Should Not, Relax Its Number Portability Mandate at This Time

As the Commission has correctly recognized, the Congress intended in the 1996 Act to open all telecommunications markets, including the local exchange and wireless markets, to competition.⁶ To this end, the 1996 Act not only removed all legal and regulatory barriers to market entry, but endeavored to eliminate or reduce economic, technical and operational

⁶ Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 113 (1996) ("Joint Explanatory Statement").

impediments to entry as well.⁷ In furtherance of the latter aim, the 1996 Act imposed upon ILECs and LECs alike the duty to provide number portability and directed the Commission to expeditiously adopt rules implementing this mandate.⁸ The Congress recognized that service provider number portability was a precondition to the emergence, growth and development of local telecommunications exchange competition and concluded that in order to achieve the 1996 Act's pro-competitive aims, number portability must be implemented both promptly and ubiquitously.

The Commission has fulfilled the mandate of the Congress in its First Report and Order. Having found that "number portability is essential to meaningful competition in the provision of local exchange services,"⁹ the Commission properly concluded that it should assume "a leadership role in developing a national number portability policy."¹⁰ In that role, the Commission adopted nine performance criteria designed to provide "an appropriate level of national uniformity"¹¹ and to ensure that any number portability architecture deployed would achieve the pro-competitive aims of the 1996 Act. Thus, the Commission mandated that any number portability scheme must "support existing network services, features, and capabilities" and must not "require end users to change their telecommunications numbers," reasoning that "any long-term method that precludes the provision of existing services and features would place competing service providers at a competitive disadvantage" and that "the ability to switch service

⁷ See generally 47 U.S.C. §§ 251, 252, 253.

⁸ 47 U.S.C. §§ 251(b)(3), 251(d)(1).

⁹ Telephone Number Portability, First Report and Order, 11 FCC Rcd. 8352 at ¶ 28.

¹⁰ Id. at ¶ 28.

¹¹ Id. at ¶ 47.

providers is only meaningful if customers can retain their telephone numbers."¹² Also on competitive grounds, the Commission barred use of any number portability model which would result in a "degradation of service quality or network reliability when [customers] port their numbers to other carriers" and prohibited carriers from asserting an ownership or property interest in any number portability technology.¹³

Critically, the Commission directed that "any long-term method ensure that carriers have the ability to route telephone calls and provide services to their customers independently from the networks of other carriers."¹⁴ As the Commission correctly recognized, "[requiring carriers to rely on the networks of their competitors in order to route calls . . . contravenes the choice made by the customer to change service providers . . . creates the potential for call blocking by the original service provider . . . may make available to the original service provider proprietary customer information . . . [would] treat ported numbers differently than non-ported numbers, resulting in ported calls taking longer to complete than unported calls . . . [and] reduce the new service provider's ability to control the routing of telephone calls to its customers, thus inhibiting its ability to control the costs of such routing."¹⁵ While the Commission recognized that this criterion would "effectively preclude carriers from implementing [Query on Release ("QOR")]," it concluded "[b]ased on the record before us . . . that the competitive benefits of

¹² *Id.* at ¶¶ 48, 49, 52.

¹³ *Id.* at ¶¶ 56, 57.

¹⁴ *Id.* at ¶ 53.

¹⁵ *Id.*

ensuring that calls are not routed through the original carrier's network outweigh any cost savings that QOR may bring in the immediate future."¹⁶

Further in fulfillment of the Congressional number portability mandate, the Commission established an implementation schedule for deployment of long-term service provider number portability, reasoning that not such a schedule was "consistent with the 1996's Act's requirement that LECs provide number portability as soon as they can do so and [would] advance the 1996 Act's goal of encouraging competition in the local exchange market."¹⁷ In creating its number portability implementation schedule, the Commission took into account projected switch software availability dates and installation rates, provided for field testing and accounted for associated burdens imposed on ILECs, as well as competitive considerations.¹⁸ Finally, the Commission built in an additional measure of flexibility, delegating to the "Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed 9 months."¹⁹

With respect to CMRS providers, the Commission carefully explained both its authority to and its reasons for imposing number portability requirements. The Commission emphasized that it possessed independent authority under Sections 1, 2, 4(i) and 332 of the Communications Act of 1934, as amended (the "1934 Act") to require CMRS providers to make

¹⁶ *Id.* at ¶ 54.

¹⁷ *Id.* at ¶ 74.

¹⁸ *Id.* at ¶¶ 77 - 81.

¹⁹ *Id.* at ¶ 85.

available number portability.²⁰ And the Commission fully justified its exercise of this authority, noting that "only limited competition currently exists in the cellular market" and that "[t]he possibility of entry by new competitors can constrain . . . duopolistic conduct by incumbent providers and thus serve the public interest by potentially lowering prices, improving service quality, and encouraging innovation."²¹ As with ILECs and LECs, the Commission assessed the burdens number portability would impose on CMRS providers, as well as the hurdles CMRS providers would face in deploying number portability, concluding that CMRS providers "will face burdens comparable to wireline carriers in modifying their networks to implement number portability, and that any technical issues that are unique to those carriers can be resolved."²²

Against this well-reasoned backdrop, ILEC and CMRS provider efforts to delay the deployment or reduce the pro-competitive impact of service provider number portability are revealed for what they are -- *i.e.*, efforts by entrenched providers to hang on to monopoly or duopoly market power for as long as possible. Certainly, the deployment of number portability will not be without its costs and burdens. These costs and burdens, however, pale in comparison to the massive competitive advantages that ILECs and cellular radiotelephone service providers will continue to possess solely by reason of their pre-existing monopoly/duopoly market positions. Moreover, Congress has arranged for contributions by all telecommunications carriers to the costs of establishing number portability, and has decreed that otherwise the burdens associated with number portability deployment are properly borne by incumbent providers within

²⁰ *Id.* at ¶¶ 152 - 154.

²¹ *Id.* at ¶¶ 155 - 161.

²² *Id.* at ¶¶ 162 - 168.

a statutory scheme in which all telecommunications markets are to be opened to competition. What's more the costs and burdens associated with the deployment of number portability have been assessed and weighed by the Commission and are reflected in the balance the Commission has struck between the conflicting interests of incumbent providers, new market entrants and consumers.

Reasons for delay can always be found. There are always technical constraints and service quality and network reliability will also be said to be threatened. Imposition of cost and operational, technical and/or administrative burdens will always give rise to complaints and a host of less onerous (and generally less effective) alternatives. It is, however, for the Congress and the Commission, not entrenched service providers whose private interests are far too parochial, to determine where lies the public interest. That determination necessarily requires a balancing of interests and a weighing of costs and benefits. The Congress and the Commission have undertaken such a public interest analysis, the results of which are reflected in the 1996 Act and the First Report and Order. The Commission should not retreat from its fully supportable determinations simply because entrenched service providers are reluctant to face competitive entry.

Experiences gained in implementing "800" database access provide useful guidance in this regard. In order to ensure timely deployment of "800" database access, the Commission imposed on the Regional Bell Operating Companies ("RBOCs") and the GTE Telephone Companies ("GTE") a series of strict deadlines and tough standards.²³ Thus, the Commission gave the RBOCs and GTE 18 months to reduce access times for 97% of their originating "800"

²³ Provision of Access for 800 Service, 6 FCC Rcd. 5421, ¶ 19 (1991), *further recon.* 8 FCC Rcd. 1038 (1993).

database access traffic to five seconds or less.²⁴ Moreover, the Commission imposed, effective two years thereafter, a five second access ceiling on all "800" database traffic and required a "mean" access time for such traffic of 2.5 seconds.²⁵ Commenting on these deadlines, the Commission remarked that "[w]hile the BOCs argue that we should permit them to reduce data base system access times at their own pace, it does not appear that many BOCs would achieve acceptable access times on their own before perhaps the mid-1990s."²⁶

Despite the Commission's clearly articulated resolve, every RBOC and GTE, as well as the independent telephone companies ("ITCs"), sought relief from the "800" database access time ceilings imposed by the Commission.²⁷ While the Commission granted limited waivers of its access time standards, it did so well into the implementation process because the major carriers had demonstrated that they were aggressively deploying SS7 in their networks, and indeed had accelerated their SS7 deployment programs, in an effort to satisfy the Commission mandate. Moreover, the Commission concluded both that due to the carriers' good faith efforts, substantial compliance with the mandated "800" database access time ceilings would be achieved and that any further acceleration of SS7 deployment programs would jeopardize network reliability.²⁸ In granting the limited waivers, however, the Commission made clear that while

²⁴ Id.

²⁵ Id.

²⁶ Id. at ¶ 23.

²⁷ Provision of Access for 800 Service, 7 FCC Rcd. 4969 (Ameritech); 7 FCC Rcd. 4973 (Bell Atlantic); 7 FCC Rcd. 5014 (NYNEX); 7 FCC Rcd. 5019 (Southwestern Bell); 7 FCC Rcd. 5035 (BellSouth); 7 FCC Rcd. 5039 (GTE); 7 FCC Rcd. 5042 (Pacific); 7 FCC Rcd. 5046 (United); 7 FCC Rcd. 5050 (U S West) (1992); Provision of Access for 800 Service, 8 FCC Rcd. 1038 (1993).

²⁸ Id.

it would relax near-term access time standards, the carriers would not only be required to adhere strictly to these revised standards, but existing long-term standards as well.²⁹ In so doing, the Commission reemphasized "the importance of 800 number portability to consumers and to a fully competitive 800 services marketplace."³⁰

In ensuring the prompt and pro-competitive deployment of local and wireless number portability, the Commission has demonstrated a level of resolve comparable to that it exhibited in the context of "800" number portability deployment. Unfortunately, it is nonetheless confronted with the same types of arguments for delay and modification as it faced in the context of "800" number portability. This time, however, such delay and modification would be more detrimental because the entities seeking relief would be competitively advantaged by such actions rather than merely relieved of certain deployment burdens. TRA, accordingly, urges the Commission to take the same tough-minded approach with respect to local and wireless number portability that it took with respect to "800" number portability. The Commission has already built into its deployment schedule more than adequate flexibility by delegating to "the Chief, Common Carrier Bureau, the authority to waive or stay any of the dates in the implementation schedule . . . for a period not to exceed 9 months."³¹ It, therefore, need not, and should not, relax its service provider number portability mandate at this time.

²⁹ Id.

³⁰ Id.

³¹ Telephone Number Portability, First Report and Order, 11 FCC Rcd. 8352 at ¶ 85.

**B. The Commission Should Retain Its
Nine Point Performance Criteria**

Retention of the performance criteria adopted in the First Report and Order is critically important if number portability is to have the pro-competitive impact envisioned by Congress. As discussed above, TRA believes that the minimum criteria prescribed by the Commission strike a reasonable balance between technical feasibility, network integrity concerns and competitive necessity, thereby satisfying the pro-competitive mandate of the Congress, while retaining adequate flexibility to accommodate innovation and improvements. The bulk of the objections to the Commission's performance criteria relate generally to the fourth enumerated element and in particular to the Commission's assessment of QOR. TRA submits that the Commission's analysis of the costs and benefits of QOR is correct and that, accordingly, the fourth element should be retained in its entirety.

The costs savings associated with use of QOR cannot justify the negative competitive ramifications of this number portability scheme. As resale carriers, TRA's members are all too aware that the greater the reliance that a carrier is forced to place on the network services of competitors, the more difficult it will be for that carrier to survive and thrive in a competitive market.³² It is for this reason that so many of TRA's resale carrier members are rapidly evolving from "switchless" to "switch-based" providers of interexchange services. A "switchless" reseller is entirely dependent on its network provider for provisioning and, accordingly, must suffer delays and abuses of carrier confidential data that "switch-based"

³² See, generally, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 518 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996) ("Local Competition Order").

resellers avoid by dealing directly with LECs. In other words, TRA's resale carrier members are acquiring switches primarily to reduce their reliance upon the network services of facilities-based IXC's.

For the same reason, TRA urges the Commission to retain its fourth performance criteria. ILEC attempts to minimize the competitive impact notwithstanding, QOR entails an unacceptable level of reliance upon ILEC networks for number portability. The Commission is absolutely correct in its assessment of the many "undesirable effects" of compelling reliance on the networks of competitors to route calls.³³ Of principal importance, such forced reliance creates the potential for call blocking, invites abuse of confidential carrier data, reduces the level of control a carrier may exercise over its call handling and hence its costs, and places new market entrants at a service quality and hence competitive disadvantage. ILEC assurances that they will not exploit these advantages simply cannot be lent any credence in what will ultimately be an intensely competitive free-for-all in the local exchange telecommunications market.

As resale carriers, TRA's members will always be forced to rely to some extent on the facilities of other carriers. Initially, TRA's resale carrier members will rely almost exclusively on the facilities of the ILECs. As new market entrants construct alternate physical networks and deploy "virtual" networks comprised in whole or part of unbundled network elements, TRA's resale carrier members will look to alternate suppliers for network services. Ultimately, TRA's resale carrier members will introduce physical facilities as they have in the interexchange market. Throughout this process, efforts will be made to limit reliance upon ILEC facilities and ultimately upon facilities of competitive LECs as well.

³³ *Id.* at ¶¶ 53 - 54.

Accordingly, TRA agrees with the First Report and Order that "a long-term number portability method should not require dependency on another carrier's network."³⁴

**C. The Commission Should Not Relax Its
CMRS Number Portability Requirements**

The Commission's assessment of the competitive state of the CMRS market is directly on point. Successful resale of cellular service is extremely difficult and exceedingly rare, principally because cellular licensees resist resale and the market is wholly inadequate to discipline this anti-competitive behavior. As the Commission has recognized, the CMRS market is far from substantially competitive. Indeed, as the First Report and Order notes, "[t]he United States Government Accounting Office, the Department of Justice, and the Commission have determined that only limited competition currently exists in the cellular market."³⁵

The reasons for the lack of competition and the antipathy toward resale in the cellular market are obvious. The wireless market is still duopolistic, currently populated by only two facilities-based providers. Until recently, barriers to entry have not merely been high, they have been insurmountable. With the licensing of broadband PCS and the emergence of enhanced SMR, competition has begun to emerge, but competition is nascent and slow to develop.

Most resale carriers have given up on the cellular market because of the unwillingness of cellular carriers to provide viable resale opportunities and products. There is, however, a renewed interest among resale carriers in the wireless market, spawned primarily by a seemingly greater degree of acceptance of resale among at least some PCS providers.

³⁴ Id. at ¶ 53

³⁵ Id. at ¶ 158.

Accordingly, resale carriers are eager to facilitate the competitive emergence of PCS and enhanced SMR providers in the wireless market.

As the Commission has correctly noted, requiring CMRS providers to offer number portability is "in the public interest because it will promote competition among cellular, broadband PCS, and covered SMR carriers."³⁶ TRA agrees with the Commission that "the inability of customers to keep their telephone numbers when switching carriers . . . hinders the successful entrance of new service providers into the cellular, broadband PCS, and SMR markets."³⁷ TRA further agrees with the Commission that "service provider portability will promote competition between existing cellular carriers, as well as facilitate the viable entry of new providers of innovative service offerings, such as PCS and covered SMR providers."³⁸

Resistance by cellular carriers to number portability does not surprise TRA. Cellular providers have been resisting resale for a decade; it is hence to be expected that they would resist other requirements that would introduce competition into the wireless market. Given the Commission's clear authority to order deployment of number portability in the wireless environment and its sound policy rationale for doing so, TRA urges the Commission to resist efforts by CMRS providers to limit number portability in wireless markets.

³⁶ Id. at ¶ 155.

³⁷ Id. at ¶ 157.

³⁸ Id.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny petitions for reconsideration filed by ILECs and CMRS providers which seek to delay full deployment and availability of service provider number portability and/or to reduce the pro-competitive impact of number portability once deployed.

Respectfully submitted,

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